



reasons set forth below and those previously identified by the Court in its order granting the stay on the discrete “market timing” issue (while permitting discovery to continue in the case on all other issues), Order at 3,<sup>1</sup> Defendants respectfully request that the Court continue the stay of discovery on “market timing” issues until April 16, 2010.

In the most recent December 14, 2009 settlement conference, Judge Motz set the following schedule related to the settlements in the MDL:

- January 15, 2010 – Parties to advise the MDL court whether or not they have signed settlement stipulations.
- January 28, 2010 – Parties who have not signed settlement stipulations are to appear for a conference with the court.
- March 31, 2010 – Deadline to file motions for preliminary approval.
- April 16, 2010 – Hearing on motions for preliminary approval.
- October 1, 2010 – Final approval hearing.

This schedule represents the final stage of six years of litigation, including extensive settlement negotiations, that will resolve hundreds of actions relating to trading in more than a dozen different mutual fund complexes and impacting millions of individual investors. The preliminary approval hearing, set for April 16, 2010, should provide the parties and this Court with a clear indication of the scope and remaining timeline of the MDL settlement. As noted in Defendants’ Stay Motion [Dkt. # 128], Plaintiffs filed a motion to intervene in *McKoy v. Bank of America Corp., et al.*, No. 1:04-cv-00867 (D. Md. filed Apr. 6, 2004), a putative ERISA class action filed against the Bank of America 401(k) Plan by its participants and consolidated in MDL 1586. *See* Elena M. David, Arlene J. Stach, And Victor M. Hernandez’s Motion to

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<sup>1</sup> The parties have conferred and Plaintiffs’ counsel have informed Defendants that Plaintiffs continue to oppose the stay for the reasons stated in their prior submission.

Intervene Pursuant To Fed. R. Civ. P. 24, *In Re Mutual Funds Investment Litig.*, MDL No. 1586 [Dkt. # 1212].

Defendants recognize that the rationale for extending the stay ultimately could very well require some postponement of the September 2010 trial date to permit the MDL court to reach a final resolution of the market timing issues,<sup>2</sup> and Defendants further acknowledge the Court's reluctance to extend the trial schedule. But the common market timing allegations create an unavoidable linkage between this case and the MDL. Lifting the stay at this juncture may permit late-breaking discovery on issues at the heart of the multi-party settlement and, potentially, lead to a trial on market timing issues just weeks before the MDL court, after years of supervising complex market timing litigation, is scheduled to proceed with a final settlement hearing that may resolve the market timing issues in this case. Principles of comity and judicial economy thus weigh heavily in favor of allowing the MDL court to finish its work without parallel market timing proceedings in another federal court complicating that effort.

In sum, the reasons for granting Defendants' initial motion and memorandum in support of the stay of discovery as to the market timing issues involving Bank of America's affiliated funds are still compelling and well support continuing the existing stay of discovery. *See* Defendants' Stay Motion [Dkt. # 128]. Discovery on all other issues in this action is currently

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<sup>2</sup> As defendants explained in prior briefing, the market timing allegations in this case were added years after the case commenced. The core issues on which discovery is proceeding do not revolve around market timing. As a result, rather than simply seeking to have the case transferred to the MDL, defendants sought a stay of the marketing timing issues in this case in light of the pending settlement in the MDL. Defendants have alerted the Judicial Panel on Multidistrict Litigation as to the common issues in this case that might be suitable for coordinated pretrial proceedings in MDL 1586, in the event that market timing issues were not stayed. *See* Letter from Amy P. Williams to Hon. Jeffrey N. Lüthi, Clerk of the Judicial Panel on Multidistrict Litigation (dated June 15, 2009) (attached hereto as Exhibit A). Defendants continue to believe that the most efficient and logical approach for the treatment of the market timing issues in this case is an extension of the present stay rather than a transfer of the case to the MDL.

ongoing, and Defendants have produced, and are continuing to produce, documents responsive to Plaintiffs' requests on a rolling basis.

WHEREFORE, for the reasons set forth above, Defendants respectfully request that the Court extend the current stay of discovery on the market timing issues until April 16, 2010, and reset the trial date until after the final approval of the MDL settlement.

Dated: December 21, 2009

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Irving M. Brenner, HEREBY CERTIFY that on this 21st day of December, 2009 I electronically filed the foregoing Defendants' Motion To Stay Discovery As To Issues Of Market Timing Involving Bank Of America And Its Affiliated Mutual Funds with the Clerk of the Court using the ECF system, which will send notification of such filing to the counsel of record listed on the service list below. In addition, I placed copies of the foregoing documents in the U.S. Mail to the counsel of record listed below.

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Dated: December 21, 2009

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